



June 7, 2017

(VIA EMAIL AND HAND DELIVERY)

Dustin Armstrong  
PADEP  
2 East Main Street  
Norristown, PA 19401

Dear Mr. Armstrong:

We submit these comments regarding the 2010 amendment to a Prospective Purchaser Agreement (collectively, "PPA") for the Bishop Tube site in East Whiteland Township (hereinafter the "site").<sup>1</sup>

At the outset we note that this public comment period provided by the Pennsylvania Department of Environmental Protection (DEP or Department) comes a full seven years after the document was finalized and signed by the state. We note also, that from what we can see, there was no public comment period associated with the January 22, 2007 PPA Amendment prior to, or subsequent to, its signing by state officials.

We also note that the public notices for the PPA documents, both the notice in the newspaper and in the PA Bulletin, fail to notify the public of crucial information, particularly:

⇒ That on January 28, 2014, DEP determined that CDP had engaged in action that "interfered with or impaired the SVE/AS system that DEP has implemented and potentially exacerbated the Existing Contamination at the site, in violation of the PPA and its two Amendments" and as a result,

---

<sup>1</sup> For the sake of providing the history of our communications with the DEP regarding the PPA and the residential development project, we include the following attachments which documents our efforts and concerns regarding this site:

Letter to Anderson Hartzell, dated March 20, 2017 (Exhibit "A")  
Letter to Anderson Hartzell, dated March 27, 2017 (Exhibit "B")  
Letter to Anderson Hartzell, dated March 28, 2017 (Exhibit "C")  
Letter to Anderson Hartzell, dated April 5, 2017 (Exhibit "D")  
Letter to Anderson Hartzell, dated April 6, 2017 (Exhibit "E")  
Letter to Anderson Hartzell, dated April 19, 2017 (Exhibit "F")  
Letter to Anderson Hartzell, dated May 16, 2017 (Exhibit "G")

**DELAWARE RIVERKEEPER NETWORK**  
925 Canal Street, Suite 370 |  
Bristol, PA 19007  
Office: (215) 369-1188  
fax: (215) 369-1181  
dm@delawareriverkeeper.org  
www.delawareriverkeeper.org

**“DEP now considers the CDP’s violation of the PPA to void the Covenant Not to Sue set forth in Paragraph 7...”**

(See Exhibit “H”, letter of January 28, 2014, Stephan Sinding to Brian Kroker)

⇒ That on December 1, 2015, in response to a request made by Manko, Gold & Katcher lawfirm on behalf of CDP that DEP reconsider its rescission of the Covenant Not To Sue, DEP explicitly refused to do so.

(See Exhibit “I”, letter of December 1, 2015, Stephan Sinding to Jonathan Spergel, Esq.)

Based on our review of the facts, the law and the PPA documents, the Delaware Riverkeeper Network believes that the terms of the PPA are unacceptable and should not be agreed to by the PADEP on behalf of our communities. The project proposed by Constitution Drive Partners (CDP) and O’Neill Development for the Site fails to ensure protection of the public health, safety or welfare, and/or the health, safety and welfare of the environment in violation of the Hazardous Sites Clean Up Act and the Land Recycling and Environmental Remediation Standards Act.

Procedurally, the actions described within the PPA are considered by the Department to be an interim response action. Importantly, the “interim response” has materially changed in the twelve years since the first PPA document was finalized and signed. Material changes include:

- who will be doing the remediation (DEP is, per the 2010 amendment, now proposing to conduct the interim remediation itself as opposed to the developer),
- what the cleanup goal for the remediation is both independently and in the context of the new intended use for the site (the 2005 PPA has the developer proposing to use the property for commercial purposes, the current intent is to develop the property for significant residential use, over 200 units),
- how the Air Sparging/Soil Vacuum Extraction (“AS/SVE”) remediation has failed due to ground water flooding issues, poor oversight, and unrepaired damage to the system,
- how the developer’s new plans -- not mentioned in the agreement or amended agreement -- will impact the future interim and comprehensive remediation plans for the site,
- how the past failure of the developer to fulfill its legal obligation to provide full access to the site for purposes of advancing full remediation of the site is to be addressed and prevented,
- what is the full extent of the remediation to be implemented and what are the elements of that remediation for purposes of expert review and public comment.

We are further deeply concerned that there has not been a final comprehensive remedial work plan for this site in the almost two decades since the Department has identified this as a HSCA site. In this intervening time period, the site's neighbors have been unnecessarily exposed to dangerous contamination from the site and any associated environmental and health impacts. Additionally, natural resources and the environment have also been continually exposed and impacted. Further, it seems clear that the Department has prioritized securing a deal acceptable to the site's proposed developer, including helping secure a \$1 million dollar grant for the developer's benefit, over securing full remediation of the site at the expense of responsible parties. The Department's actions at this site have been highly problematic and in derogation of DEP's powers and duties pursuant to 35 P.S. § 6020.301, and as set forth by Article 1, Section 27 of the Pennsylvania Constitution, and the Pennsylvania Supreme Court in Robinson Twp, Delaware Riverkeeper Network, et. al. v Commonwealth of PA. While it is our understanding that the EPA has offered to oversee and assist in remediation of the site, DEP has largely refused such help, despite its obligation to cooperate with the Federal Government to protect the public and the natural resources.

Significantly, although Little Valley Creek, an exceptional value stream, has been and continues to be impacted by the released contamination, it has not been identified for cleanup even though it borders, and is impacted by, this HSCA site.

Accordingly, this letter in its entirety and all attached exhibits are deemed to be our comment to the PPA and we highlight the following specific points for which we seek the Department's specific response as is required under 35. P.S. § 6020.1113.

**I. DEP has failed to fulfill its legal obligations to properly notice the PPA documents.**

As such, it is entirely clear, that the Department has completely failed to properly notice any new interim response actions and to compile and publish an administrative record in accordance with its obligation under 25 Pa. Code 3.22. The Department has belatedly solicited comment to the 2010 amendment to the Prospective Purchaser Agreement in violation of its obligations pursuant to Section 1113 of HSCA and also failed (we believe) to appropriately solicit comment on the interim 2007 amendment. We note that the modifications made by way of the 2007 and 2010 PPA documents to the deal struck with CDP are not minor, they are significant and substantive and the failure to subject them to notice and comment is a serious breach by the Department.

Accordingly, while the Delaware Riverkeeper Network is providing our comments to the PPA as amended in 2010 as requested in the Notice dated April 1, 2017, we are not waiving our right to object to the Department's failure and refusal to properly and timely notice any new interim response plan, or adhere to requisite applicable procedures.<sup>2</sup> The current

---

<sup>2</sup> It is our position that the failure to follow the requisite procedure in a timely manner does create a significant difference in how the remediation should have progressed had the public been properly notified and given the opportunity to comment.

notice and comments are no substitute for the aforementioned requirements if there is to be a new interim response.

We note that the broad Covenant Not to Sue the developer (including for impacts to ground and surface water beyond the site) in this instance is not in the public interest, see 35 P.S. § 6020.706(d), and is in further derogation of the Department's duties and mandates under the law. 35 P.S. §6020.301. That being said, we also believe the Department has improperly noticed the 2010 PPA. Given that DEP has determined that the Covenant Not to Sue within the document is void this provision should not have been included as being among the terms of the 2010 PPA subject to public comment. The Covenant Not To Sue is no longer a part of the PPA documents and therefore should not be represented as being still applicable or viable.

## **II. The Goals and Purposes of Applicable Laws are Not Supported by the Proposed PPA and Anticipated Development**

Among the goals of the Hazardous Sites Cleanup Act ("HSCA") are:

- (1) *The citizens of this Commonwealth have a right to clean water and a healthy environment, and the General Assembly has a responsibility to ensure the protection of that right.*
- (2) *Hazardous substances which have been released into the environment through improper disposal or other means pose a real and substantial threat to the public health and welfare of the residents of this Commonwealth and to the natural resources upon which they rely.*
- (3) *The cleanup of sites that are releasing or threatening the release of hazardous substances into the environment and the replacement of contaminated water supplies protects the public health, preserves and restores natural resources and is vital to the economic development of this Commonwealth.*
- (12)(vi) *Protect the public health, safety and welfare and the natural resources of this Commonwealth from the short-term and long-term effects of the release of hazardous substances and contaminants into the environment.*

35 P.S. § 6020.102 (emphasis added)

Among the goals/policies of the Land Recycling and Environmental Remediation Standards Act are:

- (1) *The elimination of public health and environmental hazards on existing commercial and industrial land across this Commonwealth is vital to their use and reuse as sources of employment, housing, recreation and open-space areas. The reuse of industrial land is an important component of a sound land-use policy that will help prevent the needless development of prime*

farmland, *open-space areas and natural areas* and reduce public costs for installing new water, sewer and highway infrastructure.

- (2) Incentives should be put in place to encourage responsible persons to voluntarily develop and implement cleanup plans *without the use of taxpayer funds...*
- (6) *Cleanup plans should be based on the actual risk that contamination on the site may pose to public health and the environment, taking into account its current and future use and the degree to which contamination can spread offsite and expose the public or the environment to risk*, not on cleanup policies requiring every site in this Commonwealth to be returned to a pristine condition.
- (7) *Cleanup plans should have as a goal remedies which treat, destroy or remove regulated substances* whenever technically and economically feasible as determined under the provisions of this act.

35 P.S. § 6026.102 (emphasis added).

The Hazardous Sites Cleanup Act (35 P.S. § 6020.101 et seq.) and the Land Recycling Act (35 P.S. § 6026.101 et seq.) were passed to protect public health, safety and welfare, and for the protection and restoration of the environment in order to advance the many benefits a healthy environment provides. These goals are not only not advanced by the proposed 2010 PPA that is the subject of this comment, but these goals will be specifically undermined by the 2010 PPA.

The proposed interim remediation of the site set forth in the PPA – AS/SVE technology – will not protect the public health, safety and welfare and the natural resources of this Commonwealth from the short-term and long-term effects of the release of hazardous substances and contaminants into the environment from the Bishop Tube site. Under the PPA, contamination at the site will continue for an undetermined period of time and result in an undetermined level of clean up, and as a result will result in ongoing public health and environmental harms, both on the site and beyond the site boundaries, as contamination continues to be released into the environment, including through contaminated groundwater and other pathways for release of contaminants.

The Land Recycling and Environmental Remediation Standards Act urges DEP to consider the future use of a site when evaluating remediation plans. 35 P.S. § 6026.102(6). In this case, the near-term use is to build 228 homes, and after securing only partial clean up. While it is not stated in the four corners of the document, it is known to the DEP and evident in the public record that Constitution Drive Partners intends to develop the site for a high density residential use. This sets up a dangerous precedent of bringing families, including children and other vulnerable people such as pregnant women and elderly individuals, to a site where ongoing contamination will persist and continue to be released. The releases will include discharges to Little Valley Creek, a place where people are known

to enjoy and play – it is foreseeable that the children who will eventually occupy homes in the new development will come into direct contact with the Creek. The developer's planned use will place new residents at risk of exposure, and in any event has expended, and will continue to expend, significant public resources towards negotiating and supporting a partial clean up proposal, diverting resources needed to advance full clean up. While the 2005 PPA specifically mentions the then anticipated commercial use, the 2010 PPA fails to identify the current intended residential use.

The proposed residential development will exacerbate the preexisting contamination by creating new sources and pathways for pollution and environmental degradation from the site. Given that the Little Valley Creek, associated wetlands and other associated natural resources are already compromised due to the serious contamination at the site, imposing additional nonpoint source pollution from the development, an increased volume of runoff, and the drastic reduction of a naturally-vegetated buffer will inflict a magnified level of harm to the natural resources, further compromising their condition and impacting the plants and other living organisms that they support.

The Land Recycling and Environmental Remediation Standards Act further urges DEP to encourage cleanup projects that do not burden taxpayers. 35 P.S. § 6026.102(2). Constitution Drive Partners and Brian O'Neill have made clear that they plan to pursue, and may even require, a state grant on the order of \$1 million to support their clean up if it is to proceed. The grant being sought is through Industrial Site Reuse Program. The developers have also made clear that despite the significant level of profit they are poised to receive from the massive development and partial cleanup plan, they are apparently limiting their investment to this effort to a maximum \$500,000. It seems clear that taxpayers are in fact expected to be burdened with significant costs of this proposal, despite there being known responsible parties who have the financial wherewithal to fund the remediation effort in full.<sup>3</sup>

---

<sup>3</sup> See June 24, 2016 email from Jonathan Spergel to PADEP (emphasis added)

"1. ISR Grant, Scope of Work Discussion.

a. Scope: Hot Spot soil removal and off-site disposal or ex-situ treatment and reuse (after remediated to residential standards); excavation includes saturated soils.

b. ***\$1 Million grant, plus up to \$500,000 private match*** from Constitution Drive Partners (CDP).

c. ***If little to no soil needs to be managed as hazardous waste (which will be known before 7/7 meeting), all three hot spot areas can be remediated with \$1.5 Million or less; if a significant portion of soils are characterized as hazardous, not all 3 areas will be able to be remediated, and other funding source will be required: PRPs?***

d. Department approval of scope of work needed for ISR grant application to move forward.

2. Redevelopment Concerns

a. ***In order for CDP to be able to contribute up to \$500,000 of private matching funds*** for the grant, the brownfield redevelopment project must work economically. Without permitting relief as described below, the required level of density to justify the redevelopment cannot be achieved, the hot spot removal remediation will not take place, and a dilapidated and unredeveloped eyesore will remain in the community."

The Land Recycling and Environmental Remediation Standards Act stresses environmental protection goals including implementing the program as a way to avoid needless development of open space and natural areas. 35 P.S. § 6026.102. While this policy encourages redevelopment of contaminated sites, it does so for the purposes of greater environmental protection, including open space preservation. The best way to advance this public policy at this site is to clean up the contaminated areas, not to develop the site, but to advance its preservation as natural open space for the benefit of the public. A significant portion of the site is wooded and there are significant areas of exceptional value wetlands. As stated above, Little Valley Creek, which borders the site, is part of the exceptional value Valley Creek stream system. In short, the site is, in large part, the kind of natural, open space (minus the toxic contamination) the law is designed to protect for its community and ecological benefits. The natural portions of the site are appreciated by the community in their current undeveloped state. Despite the contamination, the natural portions of the site provide ecological, quality of life and property value benefits to the community, as well as providing habitat, water cleansing and other ecological benefits. The community appreciates having the trees, wetlands and stream to view from their homes, and as they walk the community. They enjoy hearing the birds and being able to view them from their neighborhoods. They enjoy the ecological sounds and values of having this natural green space nearby. They are benefitted by the pollution prevention, stormwater management, ecological habitat, property value enhancement, erosion protection, and noise and light buffering the trees and wetlands at the site provide.

Preserving the site as a natural open space also furthers the goals of HSCA to protect “the public health and welfare of the residents of this Commonwealth and ... the natural resources upon which they rely.” 35 P.S. § 6020.102(2). The community and environment will be adversely impacted if the trees are cut, the stream and wetlands encroached upon, the natural habitats lost, and all of it replaced by roads, retaining walls, houses, driveways, and stormwater systems that discharge increasing and contaminated stormwater runoff (including being contaminated by nonpoint source pollution resulting from development of the site) into the creek and wetlands that are already impacted by contamination from the site. Loss of the woodlands and adverse impacts to the wetlands would have a profound negative impact on the community and the environment – an impact they are not willing or wanting to bear, nor should they be required to bear.

This community has suffered enough as a result of the significant contamination of the Bishop Tube site. The community is entitled to full clean-up of the site and its protection as natural open space.

### **III. The amended PPA does not account for the developer’s changed plan for the site, and DEP has failed to consider the material nature of the change**

While the original PPA signed in 2005 was entered into for purposes of accommodating commercial development, the developer is now proposing construction of 228 residential homes (primarily townhomes). This dramatic change in use is not considered in the PPA, neither for compliance with the goals and standards of applicable laws, nor for its impacts

on the existing neighboring community or residents who would live in the newly constructed homes onsite. Had the 2007 and 2010 versions of the PPA included an accurate description of the residential development, it is likely the DEP would have approached the matter differently. Had the 2007 and 2010 PPA documents included the residential development goal and been released for public review and comment, it is certain the community, including the Delaware Riverkeeper Network, would have provided significant comments. Given the lack of an appropriate endpoint (i.e. commercial vs. 228 residential units), coupled with a failing to secure public comment, the PPA cannot properly and responsibly be permitted to stand.

#### **IV. The PPA is Not in the Public Interest; Full Remediation and Preservation of the Site as Natural Open Space Best Serves the Community.**

The DEP is required to consider the public interest when entering into a “Covenant Not to Sue”. Rather than serve the public good, the PPA, along with its expansive liability protection, is clearly designed to facilitate the Developer’s residential development plan for the site. This is not in the public’s interest and is contrary to the duties and responsibilities of the department.

Full remediation and preservation of the site as open space provides the greatest level of community and ecological benefit and protection. In addition, this open space use would also help meet identified goals for increasing open space in the East Whiteland Comprehensive Plan Update, 2016.<sup>4</sup> Converting the site to open space would be beneficial to the community for recreational purposes, as well as providing habitat for wildlife and plants. Protection as natural open space will also be beneficial for water quality, flood damage reduction, erosion protection, for the benefit of aquatic habitat, for protection of air quality, and for the aesthetics of the community.

Conservation of woodlands on and near residential sites enhances property values as well as the marketability of nearby homes. People are willing to pay a premium to live near protected open space areas. The radius of economic benefits covers at least a mile.<sup>5</sup> For example, Pennypack Park has been credited for increasing the market value of nearby homes by as much as 38%. In addition to the property value increases there are complimentary property tax benefits as well.<sup>6</sup> Full remediation of the Bishop Tube site and protection as natural open space also contributes to enhanced quality of life, stress reduction and increased public safety.

Allowing for redevelopment of the site in a way that destroys the majority of the natural ecology of the site in order to secure some near term, partial remediation is not appropriate. The public and environment are better served by a plan that pursues full

---

<sup>4</sup> <http://www.eastwhiteland.org/DocumentCenter/View/132>

<sup>5</sup> See, e.g., [http://www.delawareriverkeeper.org/sites/default/files/River Values Report 0 0.pdf](http://www.delawareriverkeeper.org/sites/default/files/River%20Values%20Report%200%200.pdf); <http://www.dvrpc.org/Reports/11033A.pdf>

<sup>6</sup> See, e.g., [http://www.delawareriverkeeper.org/sites/default/files/River Values Report 0 0.pdf](http://www.delawareriverkeeper.org/sites/default/files/River%20Values%20Report%200%200.pdf); <http://www.dvrpc.org/Reports/11033A.pdf>



remediation at a cost to be borne by the responsible parties, and protects the environmental resources found on the site. The public and environment are better served by including environmental restoration and preservation of the site. Given the health, safety, and economic burdens otherwise placed on the community, the preservation, restoration and open space goal is appropriate, deserved, and in fact morally owed to this community. The DEP should not enact a PPA contrary to these more appropriate uses and goals.

## **V. Toxic Contamination Continues**

The PPA amendment sets forth only a partial emergent cleanup of the site which we now know failed and was abandoned. Subsequently, Constitution Drive Partners and O'Neill Development made plans to undertake a massive residential development project on the site and has engaged in development of an additional partial remediation plan in order to accommodate said development. But as documented by Dr. Tom Myers (see Exhibit "B"), the remaining remediation planned by the Developer and facilitated by the PPA, intentionally leaves egregious levels of toxic contamination on the site that will continue for an undetermined period of time. Contamination at the site, which will be left in place post the proposed development, leaves the site via a number of pathways, including through the discharge of groundwater.

According to Dr. Tom Myers, contaminants in the groundwater will remain after proposed excavation and site development. The developer has no plans for remediating groundwater at the site, and expert Hydrologic Consultant Tom Myers has described the potential for contaminated groundwater migrating to Little Valley Creek as, "the most important offsite risk to the environment". Little Valley Creek is part of the Valley Creek Basin designated as Exceptional Value by the State.

Dr. Myers further identified ways the proposed remediation and development plan could exacerbate contamination coming from the site. For example, excavation could "add contaminants to the groundwater and downstream waters" through "mud sticking to trucks" and dust being kicked up by equipment. Issues such as these are not addressed by the PPA or even considered.

DEP appears to continue to engage with responsible parties about site contamination, but there is no confirmed plan that identifies, when, in what way, and to what degree additional contamination at the site will be addressed.

Former Bishop Tube employees witnessed improper dumping of waste during its operations and identified additional areas to investigate for contamination which are not included in any known remedial plan or PPA. Their concerns, and the potential for additional pollution, should be taken seriously. Given the failure to publicly notice either the 2007 or the 2010 PPA for public comment, there was no official opportunity for the public to provide this kind of input. Efforts to voluntarily submit such information does not appear to have had any impact on Agency decisionmaking regarding the site.

According to Dr. Myers, a March 2017 letter from PADEP to the developer “essentially accepts the new [remediation] scope [of work] with little substantive comment, including failing to ensure that all previous PADEP questions, concerns and recommendations have been appropriately addressed.” See Myers Report at Exhibit “B.” It is concerning that the DEP has modified its recommendations for remediation in a way that makes them less protective and is contrary to its HSCA duty to act as a trustee for the environment and to implement Article 1 Section 27 of the State Constitution.

In addition to the ongoing environmental concerns, it is a concern that new residents will be invited to buy and reside in homes at a location still underlain by dangerous contamination that continues to enter our surface environment.

## **VI. Degradation of Little Valley Creek, an Exceptional Value Stream, and EV Wetlands Will Continue and Increase**

Under the PPA, the site will continue to be a source of contamination to groundwater and nearby surface water. Additionally, uncertainties regarding the extent of contamination at the site continue with additional assessments ongoing. It is a dereliction of duty for DEP to be advancing deals regarding development and uses of the site without knowing the full extent of the contamination to be addressed.

As documented by Dr. Myers, ongoing contamination from toxins at the site will continue past the proposed PPA remediation effort and development:

The remediation plan implemented as part of developing this site would not protect downgradient or downstream resources from TCE contamination because it leaves too much TCE in place. Also, it would expose the existing contamination to wind and rain which would cause it to erode and pass downstream or downwind where it would contaminate additional areas. Also, much of the contamination would remain in place, especially in groundwater and soils outside of the targeted excavation zone. Other than the additional contamination caused by water and wind erosion, this residential development and remediation will expose substantial amounts of contamination that would be left in place to increased erosion. The development would not contribute substantially to the necessary remediation of downstream and downgradient resources.

See Myers Report at Exhibit "B"

To reiterate, according to Dr. Myers, contaminants in the groundwater will remain after proposed excavation and site development, and the potential for contaminated groundwater migrating to Little Valley Creek is "the most important offsite risk to the environment" and that "PADEP's former comments had urged substantial improvement to the remediation plan, but their most recent comments simply accept the developer's plans and refusals regarding the full removal of TCE from the site." See Myers Report at Exhibit "B"

In addition to the ongoing toxic contamination, there will be increased impacts to the stream caused by the development itself.

Removal of trees at the Bishop Tube site will increase stormwater runoff and increase nonpoint source pollution which will adversely impact stream baseflow and surface water quality to the creek and the surrounding wetlands. Using a detention based approach to stormwater management, which from the record it appears is intended, will exacerbate these conditions, increasing stormwater volume in the stream channel along with nonpoint source pollution.

The replacement of the natural soils, trees and vegetation on the Bishop Tube site with hardened roads, drives, rooftops and compacted soils (including from lawns) will increase the volume of stormwater runoff, the level of pollution and heat that is gathered in stormwater systems and discharged to the creek. The increased volume of runoff discharged to the creek, directly as well as through overland flow, will cause non-natural, human induced erosion, and could result in human induced flooding problems downstream.

Reducing the level of vegetated buffer protecting Little Valley Creek adjacent to the Bishop Tube site will further harm the creek and could impact downstream communities in the form of increased stormwater runoff, pollution inputs, decreased habitat health and erosion. Streamside buffers and upland woodlands consisting of trees, shrubs and grasses have been scientifically proven to provide public safety and health benefits to communities while protecting the environment. Specifically, they protect and improve water quality of streams, including in Exceptional Value and High Quality streams; they provide flood reduction and prevention benefits; they help to address stormwater and erosion issues; and they provide economic and quality of life benefits to communities in the form of increased home values, recreation, aesthetics and quality of life.

The developer has already asked for relief from stream buffer requirements and indicated to the community an intent to use stormwater practices that will result in direct discharge to the creek. In addition to public comments made, in a June 2016 email from Jonathan

Spergel of Manko Gold & Katcher law firm to PADEP employee Sachin Shankar and former employee Cosmo Servidio, Bishop Tube has sought advance agreement from DEP for “relief” from:

- (i) Managing volume for 2-year 24-hour storm on-site;
  - (1) Need relief from infiltration on at least the bottom 2/3ds of site;
  - (2) such relief cannot come at the expense of requiring utilization of slow-release BMPs that would reduce townhome units.
- (ii) Riparian buffers – CDP can remain outside of the 100-foot buffer, but CDP simply cannot secure the required amount of density without disturbing 100’ to 150’. Further, it is impossible for CDP to satisfy the current Department equivalency demonstration worksheets for disturbance between 100’ and 150’. These worksheets are not regulation, and the Department should allow CDP to make an alternative, more qualitative equivalency demonstration. **Anti-degradation requirements would still be satisfied.**

(Emphasis added).

In addition to relief from stormwater and buffer mandates, the developer is proposing to cut into steep slopes, and engage in significant tree removal and land manipulation in order to maximize the development potential of the site.

Little Valley Creek is valued as habitat for trout. Development at the Bishop tube site will likely have adverse impacts for that habitat. In addition to the adverse impacts from ongoing TCE contamination of the stream, and the addition of nonpoint source pollution that will result from development of the site, the reduction in buffer protection may cause temperature increases and habitat degradation harmful to the trout. Buffers enhance habitat quality and regulate water temperatures.<sup>7</sup> Compared to open channels, the canopy of a forested stream reduces solar radiation and regulates stream temperatures.<sup>8</sup> Water

---

<sup>7</sup> Sweeney, B. W., & Newbold, J. D. (2014). Streamside Forest Buffer Width Needed to Protect Stream Water Quality, Habitat, and Organisms: A Literature Review. JAWRA Journal of the American Water Resources Association, 50(3), 560-584.; Richardson, J. S., Taylor, E., Schluter, D., Pearson, M., & Hatfield, T. (2010). Do riparian zones qualify as critical habitat for endangered freshwater fishes?. Canadian journal of fisheries and aquatic sciences, 67(7), 1197-1204.; Sweeney, B. W., & Blaine, J. G. (2007). Resurrecting the In-Stream Side of Riparian Forests. Journal of Contemporary Water Research & Education, 136(1), 17-27.; Sweeney, B. W., Bott, T. L., Jackson, J. K., Kaplan, L. A., Newbold, J. D., Standley, L. J., ... & Horwitz, R. J. (2004). Riparian deforestation, stream narrowing, and loss of stream ecosystem services. Proceedings of the National Academy of Sciences of the United States of America, 101(39), 14132-14137.

<sup>8</sup> Moore, R., Spittlehouse, D. L., & Story, A. (2005). RIPARIAN MICROCLIMATE AND STREAM TEMPERATURE RESPONSE TO FOREST HARVESTING: A REVIEW1.; Pusey, B. J., & Arthington, A. H. (2003). Importance of the

temperatures directly affect the metabolic rates, growth, and even survival of aquatic organisms. For example, an increase in stream temperatures from 2.9°F to 4.2°F resulted in an 81-88% reduction in young trout populations.<sup>9</sup> Food availability, habitat quality, and temperature are all important factors regulating aquatic life that can uptake and convert water pollutants that enter the channel.

As part of the Exceptional Value Valley Creek watershed, Little Valley Creek is entitled to a heightened level of protection. It is clear these issues were not considered or addressed in the PPA. The PPA and the associated development project it is intended to support and advance fail to fulfill this legal obligation.

The foregoing makes clear that the approval of the PPA, which facilitates the developer's careless plans, is inconsistent with the mandates of HSCA to "protect the public health, safety and welfare and the natural resources of this Commonwealth from the short-term and long-term effects of the release of hazardous substances and contaminants into the environment." 35 P.S. § 6020.102(12)(vi). Approval would also put the public at financial risk, because "the replacement of [contaminated] water supplies is frequently beyond the resources of the people affected" and clean natural resources are "vital to the economic development of this Commonwealth." 35 P.S. § 6020.102(3), (4). Because this is a development project involving a brownfields site, greater attention is needed for protection of the exceptional value stream resources that will be impacted. The history of contamination at the site means these EV water resources have already been compromised. As such, they need a heightened level of protection in order to help overcome the damage that is such a glaring part of the stream's past, present and foreseeable future. There is no need to provide exceptions to regulatory requirements, like the EV buffer mandate, other than that the developer wants it so he can make more profits at the expense of the environment and the community. Any sort of relief from buffer, stormwater or other requirements is totally unjustified. And yet none of these issues are given even passing consideration in the proposed PPA.

## **VII. Removing the trees in order to accommodate this massive development project will inflict further environmental and community harm.**

In addition to helping to provide habitat, reduce stormwater runoff and otherwise benefitting Little Valley Creek, the woodlands existing on the site also provide a vegetated buffer for the neighboring residential communities. The high level of development and associated tree cutting proposed for the site means neighbors who once had an attractive view of nature will now be subjected to a view of townhouses, walls, roads, driveways and street lights. In addition to seeing the development, neighbors will hear it, including associated traffic.

---

riparian zone to the conservation and management of freshwater fish: a review. *Marine and Freshwater Research*, 54(1), 1-16.

<sup>9</sup> Jones, K. L., Poole, G. C., Meyer, J. L., Bumback, W., & Kramer, E. A. (2006). Quantifying expected ecological response to natural resource legislation: a case study of riparian buffers, aquatic habitat, and trout populations. *Ecology and Society*, 11(2), 15.

The mere presence of trees can increase the market value of nearby homes by as much as 15%, even 38% in the case of Pennypack Park discussed above.<sup>10</sup> Trees absorb air pollution and help maintain air quality. The shade provided by trees reduces heat, which reduces cooling costs for property owners.

The Valley Creek Trustee Council already identifies urbanization as among the reasons for “an increase in the frequency and intensity of flood events and associated impacts such as streambank destabilization, erosion, and sedimentation” in the Valley Creek Watershed, of which Little Valley Creek is the main tributary. Development of the site as proposed would exacerbate these known adverse conditions. By soaking up water, trees prevent unnatural flooding; whether we are talking about catastrophic floods or water in the basement, trees can help prevent the harm. As discussed, removal of the woodlands at the Bishop Tube site coupled with a stormwater strategy that will collect and discharge that water into the creek, means additional floodwaters and erosion downstream. This will have impacts on the environment, safety (including sense of safety), and market values of homes downstream.

### **VIII. Stormwater Runoff Will Adversely Impact the Environment**

From statements on the record and at public meetings it appears as though a detention based, peak rate strategy will be used for managing stormwater from the site. The increased volume of discharge that could be dumped into Little Valley Creek are significant given the density of development, the level of tree removal and the level of impervious surfaces being proposed.

Absent a stormwater management plan that ensures no increased runoff volume, there will be adverse impacts downstream and for neighboring communities in the form of flood waters, erosion, habitat degradation, and pollution. A detention basin approach will not reduce the volume of runoff. An increased volume of runoff will be detrimental to Little Valley Creek, the hydrologically connected wetlands, and downstream environments and communities.

To what degree there is an intention to include water quality strategies in stormwater management design is unclear, but regardless there will still be increased pollution inputs through the basin and/or in surface runoff to the creek and the adjacent and hydrologically connected wetlands. The nonpoint source pollution that is generated by stormwater runoff includes a myriad of pollutants from urban/suburban areas during a rain event including: sediment, soils, nutrients (including phosphorus and nitrogen), copper, zinc, and other heavy metals (including lead), fecal coliform bacteria, hydrocarbons-oils-greases, atmospheric deposition, vehicle emissions, pavement deterioration, tire and brake pad

---

<sup>10</sup> Center for Watershed Protection, Better Site Design: A Handbook for Changing Development Rules in Your Community, August 1998, pg. 134

dust, pet waste, chemicals and fertilizers used in lawn care, road salts and de-icing chemicals and their agents, household chemicals, organic and inorganic debris. As noted above, stormwater also increases temperatures.<sup>11</sup>

Given that Little Valley Creek is already being dosed with dangerous toxins and contaminants from the Bishop Tube site, and will continue to suffer these pollution inputs for an undetermined period of time given that there is no discernable and comprehensive cleanup plan by DEP or the responsible parties in place, introducing a new set of contaminants from the site's development is an increased burden that cannot be justified.

It is not a defensible response to suggest that because the site is contaminated and therefore infiltration strategies are not available that this is an excuse for not addressing stormwater volume and water quality issues. To the contrary, it actually argues against development of a site in this condition where nearby wetlands, streams and communities are already being adversely impacted by pollution inputs. In addition, there are many strategies for reducing stormwater volume and improving quality – detention with direct discharge and infiltration are not the only options. One way, of course, is to avoid development, either in total or by minimizing the development footprint. In addition there are a multitude of strategies that address stormwater volume in other ways, such as evaporation, transpiration, onsite retention and more.

#### **IX. The Public Has not Been Appropriately Informed or Protected Since the PPA was first entered**

While the Department has notified the Delaware Riverkeeper Network that it seeks to be transparent with the public and encourages the public's participation with regards to the Bishop Tube site, the Department's actions tell a different story. The Department never published the 2007 PPA proposed amendment and only published this 2010 PPA proposed amendment in 2017, a full seven years after it was signed. Most importantly, on January 28, 2014, DEP Regional Manager Stephan Sinding wrote to Brian Kroker regarding the PPA and subsequent amendments and stated in pertinent part:

The last Amendment to the PPA allowed CDP to cash-out of its potential liability to DEP for releases associated with Bishop Tube under certain conditions. One of those conditions, applicable to both the original PPA and subsequent Amendments, states that CDP "shall not contribute to or otherwise exacerbate...any Existing Contamination attributable to the Site." Another condition states that CDP

---

<sup>11</sup> Cahill Associates, "Stormwater Best Management Practices, Land Use Management for Nonpoint Source Control in the Lower Delaware Coastal Zone", 1993; New York State Department of Environmental Conservation, Reducing the Impacts of Stormwater Runoff from New Development, April, 1992; DNREC and Brandywine Conservancy, Conservation Design for Stormwater Management: A Design Approach to Reduce Stormwater Impacts from Land Development and Achieve Multiple Objectives Related to Land Use, September, 1997

“shall not interfere with or impair any response actions taken by the Department or any other person or entity under the auspices of the Department.”

In early summer of 2011, a contractor for CDP destroyed the liquid boot while performing metals recovery activities within Building 8. **Needless to say, this action interfered with or impaired the SVE/AS system that DEP has implemented and potentially exacerbated the Existing Contamination at the site, in violation of the PPA and its two Amendments.** DEP requested that CDP repair the liquid boot to allow the continued operation of the SVE/AS system. This was never done, in continued violation of the PPA and its two Amendments....

**This is to advise you that DEP now considers the CDP's violation of the PPA to void the Covenant Not to Sue set forth in Paragraph 7,** which states: “These covenants....may terminate at the sole discretion of the Department upon CDP's failure to meet any of the requirements of the CO&A”...

DEP Letter Dated January 28, 2014 attached hereto as Exhibit “H” (emphasis added).

The history of CDP's work at the site and the use of the AS/SVE system raises many questions including but not limited to:

- whether the system is operational,
- whether it is appropriate in light of the water table issues experienced at the site interfering with its functioning, and
- why it has not been operated by the DEP or another party to remove contamination so that it will “minimize the continued off-site migration of contaminated groundwater and discharges to Little Valley Creek” (see 2005 DEP Notice of Proposed Interim Response).

Per DEP's web site, the SVE/AS system appears not to have been operated for years with no other interim emergency response being done; this despite the seriousness and hazards involved and the known potential for migration of pollutants into the groundwater and consequential contamination of the aquifer.

It is further not known if the DEP has shared this information with Chester County Environmental Development Council as it is surely relevant to any grant that CDP may apply to receive.

It is also unclear whether DEP notified the Township of its determination regarding the actions of CDP, the ongoing contamination at the site, and/or with regards to the Covenant



Not to Sue, before the Township agreed to rezone the property in order to allow for residential development – it seems certain the DEP’s findings and actions in this regard could have had a significant and meaningful impact on township decisionmaking in this regard.

The DEP has not been transparent with the public and is engaged in a mockery when it asks for comment on an agreement that has already been signed and then voided by its own hand. It is also misleading and deceptive for the DEP to create a web site intended to inform and engage the community with regards to the Bishop Tube site but to omit such critical information.

One must question why the DEP is going to great lengths to protect the reputation and goals of a developer that it found to have potentially exacerbated contamination.

Because CDP potentially exacerbated existing contamination at the site in 2011, DEP determined that the PPA’s covenant not to sue clause had been voided. Even assuming arguendo this could be reversed (which it can not and should not), the broad covenant not to sue, which attempts to limit the government’s and public’s remedy to redress ongoing and future contamination, should not be a part of a PPA, and we urge DEP not to agree to any PPA that includes such a covenant not to sue (particularly one that extends liability protection beyond the Site). Such a covenant is contrary to the goals of HSCA, set forth more fully above.

**X. Protecting Peoples Constitutional Rights to a Healthy Environment is Undermined by the Proposed PPA and the partial clean up and development plans it advances.**

Article 1, Section 27 of the Pennsylvania Constitution promises:

*The People have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and aesthetic values of the environment. Pennsylvania’s public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.*

As made clear in the Pennsylvania Supreme Court Case Robinson Twp, Delaware Riverkeeper Network, et. al. v Commonwealth of PA, PADEP officials have a legal obligation to ensure protection of the People’s right to pure water, clean air and a healthy environment as promised by Article 1, Section 27 of the Pennsylvania constitution. The partial, and inadequate, remediation encompassed and facilitated by the PPA, for the ultimate purpose of constructing a 228 unit housing development that prioritizes partial clean-up of the site over full clean-up by responsible parties, and includes cutting steep slopes, woodlands, and encroaching on the vegetated buffer of Little Valley Creek, an

exceptional value stream, and associated exceptional value wetlands, is contrary to DEP's constitutional obligations and its duty under Section 301(16) of HSCA.

## **XI. In Conclusion**

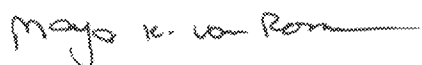
As per the expert analysis secured by the Delaware Riverkeeper Network and other documents on the record, leaving TCE contamination in place while developing the Bishop Tube site for residential purpose is not protective of the neighborhood or downstream resources and would substantially complicate future needed remediation. Accordingly, improvidently amending the PPA and facilitating the proposed residential development of the site is not the action that DEP should be focused upon at this time and certainly such action is not in the public interest. The covenant not to sue CDP is void as DEP noted in 2014.

Therefore, the Delaware Riverkeeper Network urges:

- ✓ DEP confirm that the Covenant Not to Sue pursuant to the PPA is void and so notify all state, county and local officials with any involvement in the Bishop Tube site;
- ✓ DEP prioritize securing a high quality and comprehensive cleanup of the Bishop Tube site;
- ✓ DEP ensure any remediation scope of work be expanded to include the entire affected area around the Bishop Tube site, including neighboring waterways, wetlands and downstream communities affected.
- ✓ DEP ensure full and regular report to, and engagement with, all concerned community members regarding any and all activities taken at, and/or planned for, the Bishop Tube site, including release of draft plans for comment; notification prior to any activity being taken on the Bishop Tube site including a description of the action intended, for what purpose and by whom; and monthly meetings with community leaders to ensure full and fair dialogue and access with the community

The Delaware Riverkeeper Network welcomes the opportunity to work with the DEP to accomplish a proper and protective comprehensive site cleanup.

Respectfully,



Maya K. van Rossum  
the Delaware Riverkeeper

Cc:

Secretary Patrick McDonnell, PADEP  
Acting Regional Director Anderson Hartzell, PADEP SouthEast Regional Office  
Regional Director Patrick Patterson, PADEP SouthEast Regional Office

Senator Andy Dinniman  
Senator Daylin Leach  
Representative Duane Milne  
EPA Region III  
Secretary Dennis Davin, DCED



**June 7, 2017**

**We, the undersigned, support and endorse comments made by the Delaware Riverkeeper Network regarding the proposed development of the Bishop Tube Site in East Whiteland Township.**

**The proposed development will not fully and properly address ongoing contamination at the site; it will negatively impact riparian buffers, stormwater, trees, and waterways.**

**We would like to see the site fully cleaned up to all applicable legal standards and the property turned over to the community, with soils, trees and buffers intact, for recreational use and open space preservation.**

**Respectfully,**

John Preston  
Maureen Preston  
Lewis Hitchcock  
Stephen Schmid  
Pauline Heizenroth  
John Bradlee  
Carole Buettnr  
Ann-Sofie, Bjork  
Jennifer Ruddy  
Jason Baily  
Amy Baily  
Edward Preston  
Havertown, PA  
Tamara Hoffritz  
Deborah Ryan  
Carol Rapp  
Kara Hildenbrand  
Joan Farb  
Wayne Eaton  
Thomas Nestor

Kristy Stevens  
Paula Warren  
Simon Dennis  
Jane Wilcox  
Al Levenson  
Liz Sabo  
AnnSofie Bjork  
Ashley M.  
James R.  
John Buckley  
Tom Pruette  
Maureen Murphy  
Sharon Moran  
Rachael Thompson  
Brett Shallcross  
Cynthia Shallcross  
Jerome Smith  
Dom Paranzino  
George Sabo  
Bill Coneghen

Diedre Cerrini  
George Salvadore  
Cristin Smith  
Luke Eidenmuller  
John Giannone  
MaryLou Giannone  
Bill Simmet  
C. Tazwell  
Kristine Rushyte  
Ramminas R.  
J.R. Lebesman  
T. R. Moran  
Madison Goldstein  
Robin Wilkes  
Gwen Griffith  
Ryan D.  
Marc O'Neill  
Michael Tulio  
Sarah Funk  
Angie Smith

**DELAWARE RIVERKEEPER NETWORK**  
925 Canal Street, Suite 3701  
Bristol, PA 19007  
Office: (215) 369-1188  
fax: (215) 369-1181  
drm@delawareriverkeeper.org  
www.delawareriverkeeper.org

Ronald Lee Smith  
Kjisten Robin  
Jennifer Preston  
Charles Tarloski  
Jodi Strzebkowski  
Beth  
Bella  
Cora Weaver  
Teresa Hickey  
Kim MacGuinness  
Clarissa Pugh  
Jared Rodeheaver  
Bill Mancini  
Esther Trauner  
Gwen Van Sciver  
Maureen Paulson  
Hillary Sherwood  
Jim Paulson  
Ed Andjeski  
Lauren Cunningham  
C.E. Dawson III  
Michael Sweitzer  
Pauline Heizenroth  
Wendy Toner  
David Zielinski  
Martina M. Sobolesky  
Robert Reinhardt  
Beverly Reinhardt  
Vicki Sharpless  
Lindsay Sharpless  
Ken Schmidt  
Hollace A. Rutkowski  
Lori Bartlett  
Kathleen Stauffer  
Barbara Tower  
Donna McKnight  
Carly Sobolesky  
Stephanie Sobolesky  
Bonnie Rubien  
Chris Adams  
Elisa Domenick  
Bryan Paluch  
Martha Drinkwater  
B. Kenny  
Barbara Casey  
Bob Casey  
Eileen McEvoy  
Marsha W. Peltz

Cameron Peltz  
Winslow Murdoch  
Joshua Greenwell  
Ian Small  
Larry Stauffer  
Nick Mobile  
Ed Howard  
Babara Handelin  
Liz Merloshiano  
Rebecca Spiess  
John J. McEvoy  
Karen Butow  
Deborah Massey  
Frank Hunt  
Maureen Connelly  
Rochelle Krombolz  
Keryn Lane  
Bill Drinkwater  
Frederick L. Haack  
Joan Smallwood  
Elizabeth Stauffer  
Carol Fischer  
Donna Radl  
Fred Giuffrida  
Val Cianci  
Tuula Ryde  
Cheryl Cramer  
Rosemary Rodkey  
Todd Rodkey  
Mike Willis  
Marcia Gasser  
Debra Mobile  
Laura D.  
Sam D.  
Pat Carrole  
Pat Scerba  
Laura Bond  
Beth McGarrigle  
Gary Fuller  
Katie Fuller  
John Butow, Environmental  
Engineer  
Peggy Miros  
Paige Harker  
Steve Blatman



March 20, 2017

Anderson Hartzell  
Acting Regional Director  
Pennsylvania Department of Environmental Protection  
2 E. Main St.  
Norristown, PA 19401

Re: Bishop Tube Site Meetings

Dear Acting Director Hartzell:

As is our practice at the Delaware Riverkeeper Network, we do regular scans of the Pennsylvania Bulletin for issues of concern and interest. Given the high rate of speed that the Bishop Tube development project is being advanced through the PADEP process we have been paying close attention to the PA Bulletin for applicable notices. This past Saturday I did not see any notices regarding the proposed development project at this site. And so I was surprised to see the legal notice posted at:  
<http://pa.mypublicnotices.com/PublicNotice.asp?Page=PublicNotice&AdId=4340544>  
providing for just 60 days to comment on the "amended Prospective Purchaser Agreement (PPA) with Constitution Drive Partners, L.P. (CDP) regarding the Bishop Tube HSCA Site (Site)".

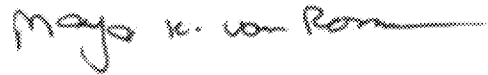
As you know, the Delaware Riverkeeper Network has significant concerns over this development proposal and the level of transparency associated with PADEP's recent advanced support for the project. I was concerned to learn that there was a 60 day comment period just announced for which neither I nor concerned members of the community received the courtesy of notification to ensure we were aware of the comment opportunity. That, coupled with the failure to provide notification in the PA Bulletin increases my confusion and concern.

Can you please ensure that I receive an immediate copy of the current Prospective Purchaser Agreement subject to this public comment notification along with clarification regarding the applicable opportunity to comment.

**DELAWARE RIVERKEEPER NETWORK**  
925 Canal Street, Suite 3701  
Bristol, PA 19007  
Office: (215) 369-1188  
fax: (215) 369-1181  
drm@delawareriverkeeper.org  
www.delawareriverkeeper.org

Given your request that I stay in direct touch with you over this issue and any concerns I might have, I submit this request directly to you, copying relevant staff.

With regards,

A handwritten signature in black ink, appearing to read "Maya K. van Rossum", followed by a horizontal line.

Maya K. van Rossum  
the Delaware Riverkeeper



March 27, 2017

Anderson Hartzell  
Acting Regional Director  
Pennsylvania Department of Environmental Protection  
2 E. Main St.  
Norristown, PA 19401

Re: Bishop Tube Site

Dear Acting Director Hartzell:

As you know, the Delaware Riverkeeper Network (DRN) has been conducting an extensive review of the files related to the Bishop Tube Site. We are very concerned that the deliberative review by the Department of Environmental Protection that was underway is now being shifted to a less rigorous review, and that previous concerns of the Department and its staff are now being set aside in order to quickly advance the project.

Attached you will find a second analysis by Dr. Tom Myers regarding the proposed development at the Bishop Tube Site. DRN will submit additional comments in the near future.

Given your request that I stay in direct touch with you over this issue and any concerns I might have, I submit this request directly to you, copying relevant staff.

With regards,

A handwritten signature in dark ink, appearing to read "Maya K. van Rossum". The signature is fluid and cursive, with a long horizontal line extending from the end.

Maya K. van Rossum  
the Delaware Riverkeeper

DELAWARE RIVERKEEPER NETWORK  
925 Canal Street, Suite 3701  
Bristol, PA 19007  
Office: (215) 369-1188  
fax: (215) 369-1181  
drm@delawareriverkeeper.org  
www.delawareriverkeeper.org



Tom Myers, Ph.D.  
Hydrologic Consultant  
6320 Walnut Creek Road  
Reno, NV 89523  
775-530-1483  
tommyers1872@gmail.com

## **Technical Memorandum**

### **Review of Bishop Tube Superfund Site and an Assessment of the Site's Proposed Residential Development**

March 23, 2017

Prepared for:

Delaware Riverkeeper Network  
Bristol, PA

## **Introduction**

The Bishop Tube site is a 13.7 acre former metals processing plant located in Malvern, PA just south of Lancaster Avenue. It initially had been used for the construction of tubing from stainless steel and more recently operated as a metal alloy tube manufacturing facility until it closed in 1999 (Roux Associates 2015, p 17). "During certain periods of time, chlorinated solvents were used at the site" (Id.).

The area has recently been rezoned for residential purposes, and the current owner, Constitution Drive Partners, L.P. (CDP), proposes to construct townhomes and apartments on the site (Environmental Standards 2017, p 1-1). CDP would excavate soils with high levels of trichloroethane (TCE) from three areas of concern (AOCs) and ship the soil offsite for disposal (Environmental Standards 2017). An AOC is an area where the concentration exceeds various standards.

The purpose of this technical memorandum is to identify issues of concern with respect to developing the site for residential use. Specifics of this technical memorandum include a review of the contaminants and hydrogeology at the site. I reviewed the 2015 Remedial Investigation Report (RIR) (Roux Associates 2015) as a primary source of information, supplemented with a 2009 groundwater investigation (Baker 2009) for an improved description of groundwater flow. In addition, I reviewed the Remedial Scope of Work Addendum dated November 18, 2016 including the attached Remediation Scope of Work dated August 23, 2016

(Environmental Standards 2016). The current remediation proposal is in Environmental Standards (2017, 2016).

## Bishop Tube Site

The Bishop Tube Site is a former metals processing plant, as noted in the Introduction. The site is relatively steep, with ground surface contours dipping steeply to the north and to Little Valley Creek (LVC) on the east side of the site. The site lies within the Valley Creek Basin on the west bank of Little Valley Creek (LVC) (Figure 1). LVC flows northward along the east side of the plant site (Figure 1). LVC is an “exceptional value” stream under the PADEP Code, Title 25, Environmental Resources, Chapter 93.

There are substantial amounts of TCE in groundwater throughout the Bishop Tube site (Figure 2). Groundwater flowing beneath the site discharges to springs and to the LVC just east of the site, both increasing the flow and the load of TCE discharging from the site (Figure 2). These streams transport TCE downstream to Valley Creek and the Schuylkill River.



**Figure 1: Local area map for the Bishop Tube site, showing the site and proximity to the Little Valley Creek.**

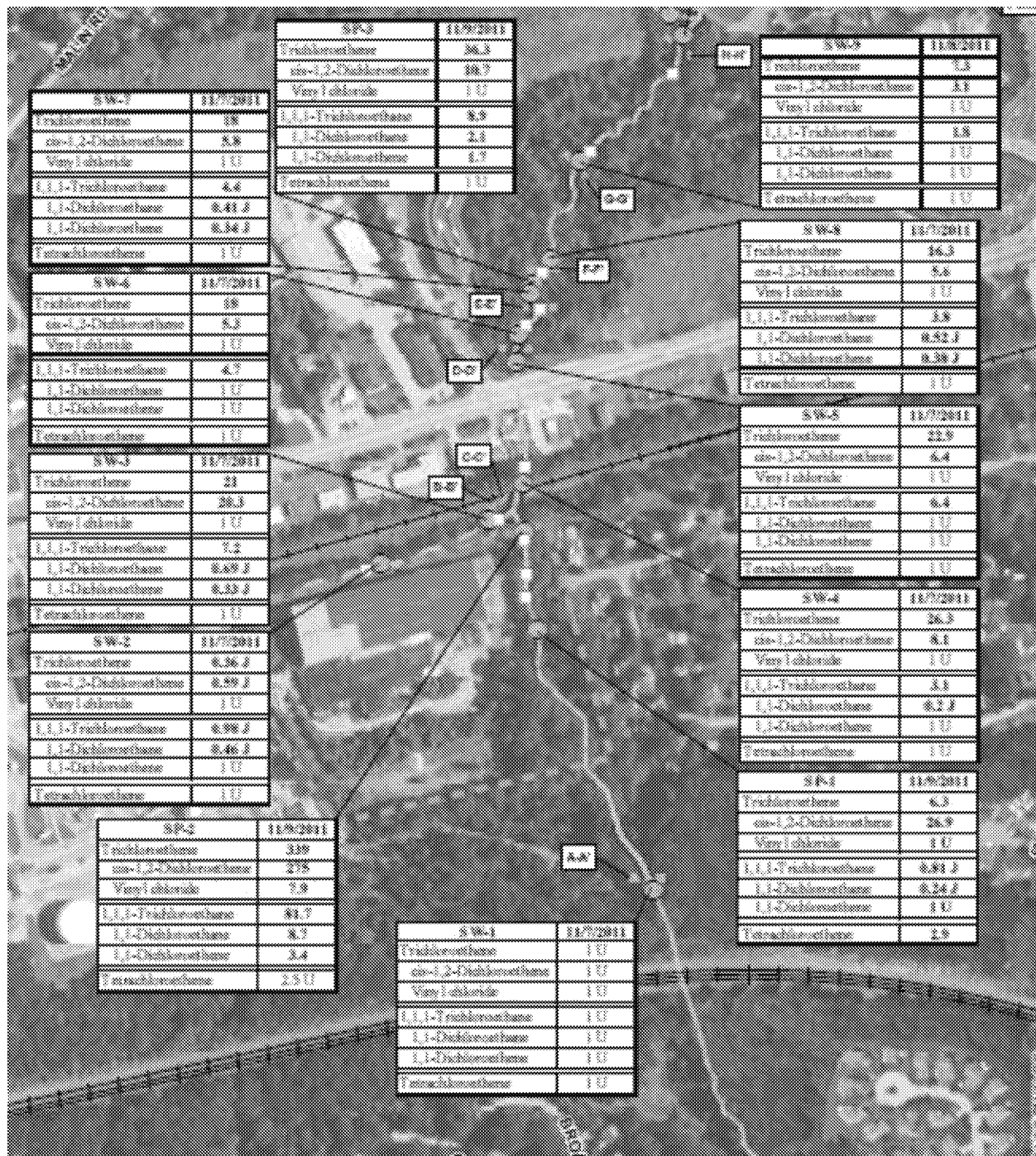


Figure 2: Snapshot of a portion of RIR Figure 6 showing TCE concentrations along Little Valley Creek.

Spills from the Bishop Tube Plant site are the source of TCE in the soils beneath the site. Soil samples reported by Roux Associates (2015) reflect areas with high TCE concentrations in the soil above the water table. Recharge seeps through overburden and leaches residual TCE from unsaturated soils to the water table, whether the water table is in the soils or bedrock. TCE

also sinks deep into the bedrock fractures, as evidenced by high TCE concentrations at substantial depth (up to 400 feet), as described in the next paragraph.

TCE concentrations at the plant site and downgradient to the northeast are very high (Roux Associates 2015, Figure 20). High concentrations occur at various depths in the bedrock, including 128,800 ug/l at 56-66 feet below ground surface (bgs) in MW-51B northeast of the site and 418,000 and 716,000 at 222-232 and 345-360 feet bgs, respectively, in MW-26C and MW-75A on the northeast corner of the site (RIR Figure 20A). TCE has transported substantially off the site to the northeast through the groundwater.

Concentrations are higher in bedrock with some being very high deeper in the bedrock (Baker 2009). Bedrock fractures divert groundwater flow to the east (Baker 2009). Groundwater flow and TCE transport follows the path of least resistance in a direction that is just north of east. Some residences in the subdivision have reported high TCE concentrations in indoor air (Baker 2009, p 4). TCE volatilizes, or evaporates, and the resulting gas accumulates in overlying airspace such as a basement. This could only occur if groundwater with TCE flowed under the subdivision.

Stream TCE concentrations increase where there are springs or where the stream gains flow over fracture zones. Overall concentrations are relatively steady state, especially over the past twenty years (RIR, Appendix D). No evidence supports a conclusion that groundwater at the site is undergoing substantial natural remediation.

### **Risks from TCE Contamination at the Bishop Tube Site**

Until the site is properly remediated, including unsaturated soils and groundwater, the contamination at Bishop Tube will affect water quality throughout the Valley Creek watershed. TCE that remains in unsaturated soil or that has adsorbed into bedrock fractures dissolves into groundwater and therefore is a continuing source until remediated. The potential for contamination to migrate from the site through groundwater to LVC as described above is the most important offsite risk to the environment. The vast amounts of TCE and contaminants remaining stored in the soils at the site create a health risk due to the potential direct contact to the soil, airborne TCE in neighboring residences, and contact with surface water.

### **Risks from Developing the Bishop Tube Site**

TCE sources will remain until removed or leached out. Removing the sources by excavating buildings and soils, as proposed by CDP, could cause short-term releases from disturbances. Allowing the materials to remain in place and slowly leach out would allow the site to be a long-term source.

Environmental Standards (2017, p 4-4) proposes excavating soils with more than 500 ug/kg of TCE from three AOCs, but not deeper than bedrock or the point of saturated conditions. Excavation could add contaminants to the groundwater and downstream waters in the following ways:

1. Simply excavating the soil will create more surface area for seepage to contact and leach contaminants. If removal occurs slowly or areas are disturbed but not removed, excavation could create a short-term increased source.
2. Future backfills change the amount of seepage reaching the bedrock. This could change the rate of transport through the bedrock. TCE held in shallow fractures will continue to be a source.
3. Heavy excavation equipment could become a temporary source. Mud sticking to trucks could have high amounts of TCE contained in it.
4. Dust leaving the site during excavation could contain high levels of TCE. Downwind sites could accumulate dust which would be a short-term source of TCE leaching into the groundwater.

The plan includes removing “source area soils to reduce ongoing leaching of CVOCs to groundwater and surface water” (Environmental Standards 2016, p 3-1). A CVOC is a chlorinated volatile organic compound and class of compounds that are predominately solvents that includes TCE. TCE and most CVOCs are dense nonaqueous phase liquids (DNAPLs) which essentially means they are denser than water so they sink and they have low solubility so that they exist as masses in the groundwater that will slowly dissolve and thereby be a contaminant source far into the future. Being denser than water, TCE at this site sinks into bedrock fractures below the saturated fill.

This plan will not remove CVOCs that have reached and sunk deeply in to the groundwater because they are denser than water and only slightly soluble. CDP will not extend excavation into saturated soil or below bedrock if unsaturated soil sits atop the bedrock. Therefore, CVOCs that have reached the bedrock through unsaturated soil or groundwater will remain after CDP’s excavation and after the residential development has been constructed, and continue to be a contaminant source for an indeterminate period. Development on the surface of this site may make remediation of this groundwater much more difficult in the future.

The installation of a vapor barrier in structures constructed above contaminated groundwater (Environmental Standards 2016, p 3-1) implies that the contaminated groundwater will be allowed to remain in place. Groundwater flows and will discharge TCE to Little Valley Creek or locations further downstream into the future. The proposed remediation will not prevent ongoing offsite flow of TCE because it only includes unsaturated soil. The importance of this has recently been verified by a consultant for CDP completing indoor air sampling at a nearby house.

PADEP should require an analysis of the amount of CVOCs in the groundwater and precipitated from solution in the aquifer; the precipitate will be a source into the future until it has dissolved and transported downgradient. Without knowing the amount, it is not possible to estimate how long it would remain a source, but considering that TCE concentrations in groundwater have been steady for at least two decades, it is likely to be on the order of at least decades. PADEP should commit to measuring the amount remaining.

PADEP has backed down from previous comments made to CDP in a way that will decrease the remediation at the site. In a letter to CDP dated March 13, 2017 (Armstrong 2017), PADEP provided its most recent comments on the January 2017 Remediation Scope of Work (Environmental Standards 2017). The new scope of work (Id.) had not implemented various previous comments made by PADEP (Environmental Standards 2016). The following paragraphs explain how the March 13 comment letter (Armstrong 2017) essentially accepts the new scope with little substantive comment, including failing to ensure that all previous PADEP questions, concerns and recommendations have been appropriately addressed.

Section 4.2, Remedial Activities (Environmental Standards 2017) describes the excavation of three areas of concern (AOCs), the former vapor degreaser area of Building #5, former vapor degreaser area of Building #8, and the former drum storage area. The 2017 estimate was for the removal of 10,788 tons while in 2016 the estimate was for 16,511 tons, with the difference being due to measurements made in December 2016. Rather than ensure this significant discrepancy was fully explained and confirmed, PADEP only suggested the soil volume calculation may be incorrect (Armstrong 2017, p 2) even though they questioned the precision of the instrument used to make the measurements (Armstrong 2017, p 3).

PADEP also gave up on comments regarding the necessary excavation being “greater or smaller than contamination in unsaturated soils” (Environmental Standards 2016a, p 3). PADEP requested sampling outside of the three identified AOCs so that CDP could remove additional contaminated saturated soil (Id.). CDP claims that any contamination outside of the AOCs would be “associated with TCE migration due to groundwater flow” and that “CDP will not chase impact in saturated soil resulting from migration of TCE in groundwater” (Id.). PADEP dropped this concern in the letter even though staff have recognized that CDP’s position was different than earlier statements. TCE remaining in unsaturated soils creates a source that with time will expand away from the AOCs both through unsaturated soil and groundwater. Because TCE becomes PADEPs responsibility once it moves from unsaturated soil to groundwater, delaying remediation shifts responsibility to PADEP.

PADEP noted that past investigations have shown TCE concentrations exceeding 500 ug/kg extend far below 12 feet below ground surface (bgs), but Environmental Standards stated that

CDP will not excavate below 12 feet bgs because that “extends well in to the saturated zone at the three AOCs” (Id.). PADEP does not raise any issues regarding contamination going below that level in their current comments on section 4.4 (Armstrong 2017, p 3). PADEP’s only comment is to use a more sensitive photo-ionization detector than had been used previously and to base the limits of the excavation on laboratory analytical results (Id.). PADEP has apparently accepted CDP’s intent to stop at the point where they encounter saturated conditions.

Environmental Standards claimed that “it is not CDP’s intent to achieve Act 2 standards in saturated soil, which is clearly a groundwater issue” (Environmental Standards 2016, p 3). They claim that CDP has “satisfied its remedial obligations at the Site pursuant to a Consent Order” (Id.). They also claim that the current proposed excavation “goes far beyond the legal obligation” at the site (Id.). Environmental Standards also notes that “CDP has no obligation to remediate saturated soils and will not do so, aside from excavating saturated soils below the planned unsaturated soil excavations. The proposed removal ... is a voluntary act on the part of CDP ...” (Environmental Standards 2016a, p 6). CDP is clearly arguing that even this excavation is beyond their responsibility. This will allow TCE in groundwater at the site to continue as a source far into the future. PADEP does not counter this in any way (Armstrong 2017).

CDP’s insistence on not excavating into saturated soil could leave more contamination in the ground if they excavate during a wet period. Tables and figures in Baker (2009) shows the groundwater elevation at various wells in the area varied by several feet over the years of sampling. The water level sampling did not necessarily coincide with wet periods nor were measurements made frequently enough to be assured of capturing high water tables. Excavation that occurs during wet periods could end up removing several feet less soil, and significantly less contamination, because of a high water table. PADEP should require remediation during dry periods to assure that more soils are unsaturated.

CDP also refuses to consider whether backfilling with certain materials, such as gravel, would “exacerbate migration of contaminants in groundwater or subsurface vapors” (Environmental Standards 2016, p 6) because they will install “vapor mitigation systems” (Id.) in nearby structures. Clean gravel will cause there to be a vapor pressure gradient established between the remaining contaminated soil and the clean gravel. The gradient could establish transport to the clean gravel and if the sources have sufficient TCE mass in them, they may no longer be clean. CDP considers it a nonissue (Id.) and PADEP is no longer concerned with this, as shown by their remaining comment that fill “must comply with DEP’s Clean Fill Policy” (Armstrong 2017, p 4). Backfilling with gravel could cause precipitated TCE in the saturated soil to diffuse into the backfill such that the site could be as much of a source after excavation as before.

## **Conclusion**

Chlorinated solvents contaminating soils and groundwater beneath the Bishop Tube Superfund Site have been a risk to human health and ecosystems in the Valley Creek watershed since at least the 1980s. Large quantities have bound to unsaturated soils at the site and have leached into groundwater. TCE is found more than 300 feet bgs in bedrock fractures because of its high density.

Characteristics of TCE and related products cause it to remain at the site and slowly dissolve into groundwater. Because the contaminants are toxic at extremely low concentrations, the unremediated site will continue to be a hazard for the foreseeable future. Contaminants can pass downstream through surface waters from LVC to Valley Creek and the Schuylkill River or through groundwater by transporting with groundwater flow through bedrock fractures to points of discharge, including springs or streams. It is likely that not all discharge points to surface waters have been identified. Contaminants also can pass offsite as dust.

The remediation plan implemented as part of developing this site would not protect downgradient or downstream resources from TCE contamination because it leaves too much TCE in place. Also, it would expose the existing contamination to wind and rain which would cause it to erode and pass downstream or downwind where it would contaminate additional areas. Also, much of the contamination would remain in place, especially in groundwater and soils outside of the targeted excavation zone. Other than the additional contamination caused by water and wind erosion, this residential development and remediation will expose substantial amounts of contamination that would be left in place to increased erosion. The development would not contribute substantially to the necessary remediation of downstream and downgradient resources.

PADEP's former comments had urged substantial improvement to the remediation plan, but their most recent comments simply accept the developer's plans and refusals regarding the full removal of TCE from the site. The site will continue to be a source of contamination to groundwater and nearby surface water even after it is developed for residential uses. The uncertainties around the current assessments of the extent of contamination at the site will remain but be underneath a residential development.

## **References**

Armstrong DA (2017) Letter to Mr. Guy Wolfington, Constitution Drive Partners, L.P, Re: Bishop Tube Site, Remediation Scope of Work for Targeted Soil Excavation. PA Department of Environmental Protection, March 13, 2017.



Baker, Michael, Jr. (2009) Shallow Groundwater Feasibility Study Report, Bishop Tube Site, East Whiteland Township, Chester County, Pennsylvania, PADEP Contract No. SAP40000006380, Prepared for Pennsylvania Dept of Environmental Protection.

Environmental Standards, Inc. (2017) Remediation Scope of Work for Target Soil Excavation, Bishop Tube Facility, 1 Malin Road, Malvern Pennsylvania. Valley Forge PA. August 23, 2016, Revised January 16, 2017.

Environmental Standards (2016) Letter to Mr. Dustin A. Armstrong, Pennsylvania Department of Environmental Protection, Norristown PA, Response to Comments, Bishop Tube Site, Remedial Scope-of-Work for Targeted Soil Excavation. October 10, 2016.

Roux Associates (2015) Remedial Investigations Report, Former Bishop Tube Property, Chester County Pennsylvania. Prepared for the Bishop Tube Project Team. August 31, 2015, Logan Township, NY



March 28, 2017

Anderson Hartzell  
Acting Regional Director  
Pennsylvania Department of Environmental Protection  
2 E. Main St.  
Norristown, PA 19401

Re: Bishop Tube Site

Dear Acting Director Hartzell:

I am writing to follow up on my March 20, 2017 letter regarding the legal notice for the Perspective Purchaser Agreement (PPA) for the Bishop Tube Site, and the lack of notice in the PA Bulletin. The referenced letter is attached hereto.

I respectfully request a written response to the issues raised in my letter; particularly the notice issue, clarification of the opportunity to comment on the current PPA, and that I promptly receive a copy of the Agreement.

Given your request that I stay in direct touch with you over this issue and any concerns I might have, I submit this request directly to you, copying relevant staff.

With regards,

A handwritten signature in dark ink, appearing to read "Maya K. van Rossum". The signature is fluid and cursive, with a long horizontal stroke at the end.

Maya K. van Rossum  
the Delaware Riverkeeper

DELAWARE RIVERKEEPER NETWORK  
925 Canal Street, Suite 3701  
Bristol, PA 19007  
Office: (215) 369-1188  
fax: (215) 369-1181  
drm@delawareriverkeeper.org  
www.delawareriverkeeper.org



March 20, 2017

Anderson Hartzell  
Acting Regional Director  
Pennsylvania Department of Environmental Protection  
2 E. Main St.  
Norristown, PA 19401

Re: Bishop Tube Site Meetings

Dear Acting Director Hartzell:

As is our practice at the Delaware Riverkeeper Network, we do regular scans of the Pennsylvania Bulletin for issues of concern and interest. Given the high rate of speed that the Bishop Tube development project is being advanced through the PADEP process we have been paying close attention to the PA Bulletin for applicable notices. This past Saturday I did not see any notices regarding the proposed development project at this site. And so I was surprised to see the legal notice posted at:  
<http://pa.mypublicnotices.com/PublicNotice.asp?Page=PublicNotice&AdId=4340544>  
providing for just 60 days to comment on the "amended Prospective Purchaser Agreement (PPA) with Constitution Drive Partners, L.P. (CDP) regarding the Bishop Tube HSCA Site (Site)".

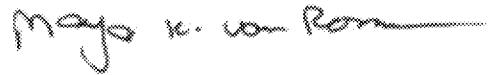
As you know, the Delaware Riverkeeper Network has significant concerns over this development proposal and the level of transparency associated with PADEP's recent advanced support for the project. I was concerned to learn that there was a 60 day comment period just announced for which neither I nor concerned members of the community received the courtesy of notification to ensure we were aware of the comment opportunity. That, coupled with the failure to provide notification in the PA Bulletin increases my confusion and concern.

Can you please ensure that I receive an immediate copy of the current Prospective Purchaser Agreement subject to this public comment notification along with clarification regarding the applicable opportunity to comment.

**DELAWARE RIVERKEEPER NETWORK**  
925 Canal Street, Suite 3701  
Bristol, PA 19007  
Office: (215) 369-1188  
fax: (215) 369-1181  
drm@delawareriverkeeper.org  
www.delawareriverkeeper.org

Given your request that I stay in direct touch with you over this issue and any concerns I might have, I submit this request directly to you, copying relevant staff.

With regards,

A handwritten signature in black ink, appearing to read "Maya K. van Rossum". The signature is written in a cursive, flowing style with a horizontal line extending to the right.

Maya K. van Rossum  
the Delaware Riverkeeper



April 5, 2017

Anderson Hartzell  
Acting Regional Director  
Pennsylvania Department of Environmental Protection  
2 E. Main St.  
Norristown, PA 19401

Dear Mr. Hartzell,

According to a June 20, 2016 email from Jonathan Spergel of Manko Gold & Katcher law firm to PADEP employee Sachin Shankar and former employee Cosmo Servidio, Bishop Tube has sought advance agreement from PADEP for the following for its proposed development project:

"c. Relief Required:

- i. Managing volume for 2-year 24-hour storm on-site
  1. Need relief from infiltration on at least the bottom 2/3ds of site;
  2. Such relief cannot come at the expense of requiring utilization of slow-release BMPs that would reduce townhome units.
- ii. Riparian buffers – CDP can remain outside of the 100-foot buffer, but CDP simply cannot secure the required amount of density without disturbing 100' to 150'. Further, it is impossible for CDP to satisfy the current Department equivalency demonstration worksheets for disturbance between 100' and 150'. These worksheets are not regulation, and the Department should allow CDP to make an alternative, more qualitative equivalency demonstration. **Anti-degradation requirements would still be satisfied."**

In addition, in the same email, Spergel sought requests, on behalf of Constitution Drive Partners,

- "3. Rescission of covenant not to sue termination letter. CDP is fully committed to trying to successfully redevelop and remediate the site, and in fact has identified the real possibility

DELAWARE RIVERKEEPER NETWORK  
925 Canal Street, Suite 3701  
Bristol, PA 19007  
Office: (215) 369-1188  
fax: (215) 369-1181  
dm@delawareriverkeeper.org  
www.delawareriverkeeper.org

of securing a \$1 Million grant, as well as agreeing to contribute up to \$500,000 of private matching funds. CDP believes it is time to rescind the letter, which has been a further stigma for the project.”

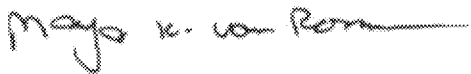
None of these requests are appropriate for a project that is already fraught with so much negative environmental and community impact. What is PADEP’s current stance on these issues?

In this same June 24, 2016 email it is asserted that the limit of CDP’s commitment to remediate the site is \$1.5 million with \$1 million of that being in the form of a grant from the State and only \$500,000 being from CDP itself. Anything above the \$500k commitment from CDP seems, as suggested by the email, to be out of bounds, and instead CDP is asking if DEP can secure any additional needed funds from other parties involved with this contaminated site. Can you please provide the status of these conversations regarding funds?

We note that according to a January 22, 2016 email from Jonathan Spergel of Manko Gold & Katcher, there was a threat of a claim of taking if PADEP took the position that full remediation of the site would be required prior to development. This is, of course, a spurious and charged claim. What position has PADEP taken on this false legal claim?

We will be submitting comments to you as new and concerning information emerges and comes to our attention. Given the speed with which PADEP is suddenly seeking to advance this project in partnership with CDP, and given the severity of the concerns at issue, we feel this is the most appropriate and responsible path for us to take.

With regards,

A handwritten signature in dark ink, appearing to read "Maya K. van Rossum", with a horizontal line extending to the right.

Maya K. van Rossum  
the Delaware Riverkeeper

cc:

Senator Andy Dinniman

Representative Duane Milne

PADEP Acting Secretary Patrick McDonnell



April 6, 2017

Anderson Hartzell, Acting Regional Director  
Pennsylvania Department of Environmental Protection  
2 E. Main St.  
Norristown, PA 19401

Re: Bishop Tube Site Perspective Purchaser Agreement

Dear Acting Director Hartzell:

I am writing to follow up on the multiple calls placed and letters submitted to your office seeking to review (either in person or by receiving a copy) the Perspective Purchaser Agreement (PPA) noticed in the PA Bulletin on April 1, 2017. On Friday March 31, Delaware Riverkeeper Network employee Molly Atz left Dustin Armstrong a voicemail per the PA Bulletin Notice, in an attempt to examine the PPA. She never received a response. On Wednesday, April 5, Delaware Riverkeeper Network employee Corinne Bell left voicemails for both Mr. Armstrong and Mr. Schena, and never received a response. Both Messrs. Schena and Armstrong were called again on Thursday, April 6, and no response was received. In addition, Maya van Rossum, the Delaware Riverkeeper, also left messages with Mr. Armstrong and Mr. Schena seeking immediate access to a copy of the PPA when they failed to answer their phones.

It is now nearly a week into the public comment period for the PPA and after multiple attempts to obtain a copy of the PPA, there has been no response.

Please provide DRN with a copy of the PPA by April 6, 2017 via email address [keepermaya@delawareriverkeeper.org](mailto:keepermaya@delawareriverkeeper.org).

Respectfully,

A handwritten signature in black ink that reads "Maya K. van Rossum".

Maya K. van Rossum  
the Delaware Riverkeeper

cc: Senator Andy Dinniman & Representative Duane Milne

DELAWARE RIVERKEEPER NETWORK  
925 Canal Street, Suite 3701  
Bristol, PA 19007  
Office: (215) 369-1188  
fax: (215) 369-1181  
[drn@delawareriverkeeper.org](mailto:drn@delawareriverkeeper.org)  
[www.delawareriverkeeper.org](http://www.delawareriverkeeper.org)







April 19, 2017

Anderson Hartzell, Acting Regional Director  
Pennsylvania Department of Environmental Protection  
2 E. Main St.  
Norristown, PA 19401

**Re: Bishop Tube Site, East Whiteland Township, Chester County, PA**

Dear Acting Director Hartzell,

I write with a number of concerns about the Pennsylvania Department of Environmental Protection's (PADEP) approach to the proposed development of the Bishop Tube Site in East Whiteland Township, Chester County, PA. The Delaware Riverkeeper Network has been meeting with a growing number of residents who are increasingly concerned about the project and the failure of decisionmakers to hear their concerns and their goals for the site.

**Community Goals – Full Cleanup and Public Open Space**

Those with whom we have been meeting would like to see the entire site – including saturated soils, unsaturated soils, groundwater, releases to air – fully cleaned up to the highest standards that will protect direct contact and turned into public open space for the community.

There is not community support for the granting of up to \$1 million of state grant funds to a private developer only to accomplish a partial remediation that supports maximum development of the site for residential development, which will bring more families to an area of known and dangerous contamination and will result in the loss of wooded open space that is valued by the surrounding community. This is particularly so given the lack of a plan for ensuring full cleanup of the site by a date and time certain for the protection and benefit of the community.

**Holding the Responsible Parties Fully, Including Financially, Accountable, Rather Than Supporting a Private Developer with Public Funds. If DEP Can't Do It, EPA Should**

The Delaware Riverkeeper Network and the community with whom we are working cannot understand why PADEP has spent so much time and resources on trying to advance development of this site with a private developer who will only be undertaking partial remediation if, and only if (as we understand it), they get a significant (we understand \$1 million) grant of state funds to carry out this work, knowing the developer will be securing a likely significant profit from the site's sale. Why has DEP not spent the past ten years investing its time and resources, just as firmly, diligently, and passionately pursuing the responsible

DELAWARE RIVERKEEPER NETWORK  
925 Canal Street, Suite 3701  
Bristol, PA 19007  
Office: (215) 369-1188  
fax: (215) 369-1181  
dm@delawareriverkeeper.org  
www.delawareriverkeeper.org

parties, thereby ensuring full cleanup of the site at their expense, not at the public's expense. The identified responsible parties have significant financial resources to undertake this work.

According to documents on the record, the PRPs for this site include Johnson Matthey and the Whitaker Corporation. Johnson Matthey on its own is financially equipped to address the contamination at this site.

If DEP is unable to accomplish the job of securing full cleanup of the site, it should reach out to the EPA and urge that the site be placed on the National Priority List of the Superfund Program.

### **PPA – Full Public Comment Period Should be Provided**

The PADEP published a 60 day public comment period on the prospective purchaser agreement for the site in the PA Bulletin on April 1, providing two phone numbers to contact in order to secure the ability to review the document at issue. Three members of the Delaware Riverkeeper Network staff repeatedly reached out over the course of the week after publication to secure access to a copy of the document for review. We placed phone calls, emails and even had a staff member at the PADEP Southeast Regional office who was willing and able to pick up the document had there been any responsive communication. Unfortunately, as documented in our letter of April 6, our outreach was ignored by PADEP staff. It was only on April 7, after my placing a number of firm phone calls and documenting this failing for the record that the Delaware Riverkeeper Network finally secured a copy of the document.

Given that our inability to secure a copy of the PPA document for review was the result of PADEP ignoring our multiple efforts, we request that the public comment period be extended by a full 7 days to ensure we have been provided a full 60 day period to review and comment on the document.

### **Assertions by Constitution Drive Partners to the Community That Need Information or Clarification.**

Brian O'Neill sent a letter to many in the community making a number of assertions which PADEP needs to address, deny or confirm.

#### Investment in the site?

Mr. O'Neill asserts that he intends to "spend millions of dollars" to clean up contamination from the site. Yet, from a communication between Mr. O'Neill's legal counsel and DEP dated June 24, 2016, it is asserted that the limit of CDP's commitment to remediate the site is \$1.5 million, with \$1 million of that being in the form of a grant from the State and only \$500,000 being from CDP itself. Anything above the \$500k commitment from CDP would have to be provided by other parties (their emails suggests perhaps the "PRPs?")...

It is my understanding that Mr. O'Neill is supposed to be documenting with the PADEP the amount of investment he is making in the site. Given that Mr. O'Neill asserts to the public he is spending "millions" on the site, while he is telling PADEP he will spend no more than \$500,000, it is important to understand the truth of the matter. Can you please provide the information that fully documents any and all investment Mr. O'Neill has made or intends to make in this site.

Mr. O'Neill's letter tries to blunt the community concern that he is seeking \$1 million of public monies to fund the remediation portion of his private development venture by asserting that if

the state had to clean up the site with HSCA funds that they too would be using public dollars. Of course, that ignores the fact that a state cleanup could result in a healthy, safe and beautiful community park, while Mr. O'Neill's proposal would result in a site still plagued by significant contamination in the saturated zone and groundwater, would take from the community the natural woodlands it enjoys, and would result in a high level of impervious surfaces that would have serious adverse stormwater consequences for the creek.

At this point I would like to inquire about – and confirm – the outcome of the conversations about the developer's desire to include demolition of the buildings at the site as part of the scope of work covered by the state ISRP grant being sought. According to an email exchange from the developer's attorney, Jonathan Spergel, to PADEP officials:

“As you know, we are trying to see if we can include building demo within the approved PADEP scope; DCED would approve this, but as Dustin communicated to Guy today, PADEP would not want this included if it meant that the rest of the planned remedial activities could not be funded. “

I would like to inquire about the additional testing done by Roux to:

- “Further characterize soil conditions in the northeast corner of the Property; and
- Respond to DEP's comments regarding an undiscovered residual source area associated with the northeast corner of the Property.”

What was the outcome of this testing? Did it include the unsaturated soils that are proposed for development but not remediation in the current development proposal?

#### DEP unable to enforce against PRPs?

Mr. O'Neill's letter asserts that PADEP is ill equipped to hold the PRPs accountable for addressing contamination at this site.

- “The companies responsible for this contamination have been ‘ducking’ East Whiteland ... and the DEP for over 40 years.”
- “DEP has been unable to force these companies to take remedial action.”

If this is in fact the case, it undermines assertions that the proposed partial cleanup and development is part of an effort that will ultimately result in a safe environment for present and new residents....

- If, as Mr. O'Neill suggests, PADEP is in fact unable to secure full remediation of the saturated zone and highly contaminated groundwater, then how can the community (including the new residents from the new development) have confidence that they will not continue to be exposed to contamination coming off of this site in either the near term or the long term?
- And doesn't this also mean that with only a partial remediation and construction of 228 homes on the site, PADEP and Mr. O'Neill would knowingly be bringing new residents, families and children to a site that is underlain, and bordered (in the form of a Little Valley creek that is receiving ongoing contamination from the site's groundwater) by serious contamination, including toxins as dangerous as TCE, that

they do not expect to be cleaned up in full any time soon, and also would be knowingly supporting a situation of ongoing contamination to exceptional value streams?

PADEP must either make the commitment necessary to hold the responsible parties fully accountable and secure full cleanup at their expense, or acknowledge its inability to do so and seek assistance from the EPA Superfund program. To map out a plan for only partial cleanup in order to accommodate a development project that will expose new families to an ongoing hazard for which you are unable to confirm how, when or to what degree the contamination will ultimately be addressed in full is inexcusable.

If PADEP is going to take the position that Mr. O'Neill is wrong and that it has been diligently and effectively pursuing the responsible parties and can identify how, when and to what degree it will secure full cleanup of the site, then a full report of your efforts is needed. If in fact, Mr. O'Neill's assertions are correct and PADEP is unable to bring the responsible parties to the cleanup table then, also, a full accounting of your efforts is warranted as well as an effort to secure National Priority List status for the project under the federal superfund program.

In his attack on a local resident, as well as myself, Mr. O'Neill asserts that this project has not been identified by the federal Superfund program as a site of concern. In fact, documents on EPA's website belie that assertion. See attached.

Development is necessary to ensure proper cleanup of the site?

In many ominous ways, Mr. O'Neill suggests that without his development project the Bishop Tube site will not be properly cleaned up, near term or long term, and as a result the community will continue to be exposed to the hazards found at the site. But this is simply not the case.

Mr. O'Neill's letter asserts:

- "Unless CDP redevelops the Site, these dilapidated structures will remain at the property for the foreseeable future. Any future remediation by PADEP or the PRPs under HSCA would likely not result in the demolition of these dilapidated structures."
- "...the proposed soil remediation through excavation and off-site disposal may NEVER take place if the redevelopment does not occur."
- "...it is inaccurate and counterproductive to argue that waiting for PADEP or the PRPs to remediate the site under the HSCA process will be better for the environment, Little Valley Creek and East Whiteland Township. To the contrary, not only will this path result in significant delay (likely additional years) in the remediation of contaminated soil at the site, this path will likely result in a HSCA remedy that will call for contaminated soils to REMAIN at the site forever."

And while failing to acknowledge that he is himself seeking state funds to provide only a partial cleanup that will knowingly leave contamination at the site, including in groundwater and the saturated zone with pathways for ongoing contamination to enter Little Valley Creek and the environment, Mr. O'Neill asserts:

- “During this delay, these contaminated soils will continue to contribute to the contamination of groundwater at the site, as well as the contamination of Little Valley Creek ...”

The assertions that without Mr. O’Neill’s development project the community cannot expect the government to ensure full cleanup of this highly contaminated site is patently false. It would only be through an abject failure of the agencies to fulfill their legal obligations to the community and the environment that this would be the case. In fact, assuming PADEP and/or EPA do their jobs properly; the community can and should expect a clean and safe site within their community.

Importantly, if the agencies were to hold the responsible parties fully accountable, not only would the site be fully cleaned up, but it would be done at the expense of the responsible parties, not through government grant.

And, as stated in an email exchange from PADEP representative Ragesh Patel:

“The site has to meet Act 2 standards at the end of the remediation, regardless of who performs the work including the responsible party, developer or the HSCA Program.”

#### Strictly Voluntary?

In his letter to residents Mr. O’Neill repeatedly states that his remediation efforts at the site are purely voluntary, and that he has no obligation to undertake them. Mr. O’Neill asserts that “CDP has already satisfied ALL of its remedial obligations under a consent order and agreement that CDP entered into with the PADEP prior to purchasing the site in 2005, CDP has NO LEGAL OBLIGATION at all to clean up any remaining contamination at the site.”

Of course, he neglects to recognize that if he wants to build on the site, he does in fact have to undertake remedial action. And he certainly has to undertake remediation work if he expects to receive the \$1 million grant he is seeking. The question is—how much? And it appears that, until recently, PADEP continued to express significant concerns and voice the need for greater intervention. More recently, however, the Department seems to be taking a much lighter stance with regards to the proposed project.

With regards to fulfilling his obligations under the PPA ... that is yet to be determined. The Delaware Riverkeeper Network will be carefully reviewing the PPA document, the requirements it does (or does not) contain, and CDP’s compliance therewith.

It is irrelevant that Mr. O’Neill is not legally responsible for the contamination as he continually complains. The fact is he bought the site knowing it was highly contaminated and that if he wanted to build there it would require significant action, activity and investment. He also knew that there was always the risk that, at the end of the day, he may not be allowed to undertake the work he desires in the manner and to the limited degree with the limited investment that he was willing to undertake. This was a business decision and a business risk.

#### Stormwater Management and Tree Cutting

While Mr. O’Neill recognizes that he will need a stormwater management permit to build on the site, we are unaware of any permit application being placed before PADEP that would give the community a full understanding of what is being proposed. At a public meeting Mr. O’Neill talked about a discharge to the Little Valley Creek. The increased volume of discharge that could be

dumped into Little Valley Creek, as proposed by Mr. O'Neill in his public statements, and the downstream ramifications, are significant given the density of development, the level of tree removal and the level of impervious surfaces being proposed. There is also a request in writing from Mr. O'Neill to PADEP that he be allowed relief from stream buffer mandates.

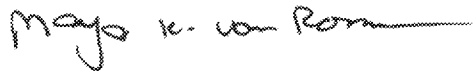
Can you please confirm whether or not PADEP is engaged in review of a stormwater permit application for this site and to what degree it has agreed to provide relief from stream buffer mandates?

Mr. O'Neill's assertion that this is not a "greenfield", fails to recognize the ecological and community value of the woodland located at the site, and of the pollution prevention, stormwater management, ecological habitat, property value enhancement, and noise and light buffering those trees provide. That portion of the property is very green, and loss of the woodlands would have a profound impact on the community and the environment – an impact they are not willing or wanting to bear.

Attacking Residents - a Concern

I conclude by observing that not only does Mr. O'Neill's letter provide misleading information, and at times make some oddly extreme representations with red lettering, capital letter callouts and a harsh tone, but the letter also makes a point of attacking an East Whiteland Township resident for sharing with her neighbors her concerns. His attacks on me are silly but not surprising. His attacks on Carla Zambelli are inappropriate, harsh, and frankly his underlying premise for the attacks on either of us is flat out wrong. I do not think that PADEP should continue to ally itself with such abusive tactics represented in this letter and in harsh public statements blasted out at the community when they try to communicate their concerns and opposition to his plans.

Respectfully for the Record,



Maya K. van Rossum  
the Delaware Riverkeeper

Cc:

Secretary Patrick McDonnell, PADEP  
Senator Andy Dinniman  
Senator Daylin Leach  
Representative Duane Milne  
EPA Region III  
Secretary Dennis Davin, DCED



May 16, 2017

Anderson Hartzell, Acting Regional Director  
Pennsylvania Department of Environmental Protection  
2 E. Main St.  
Norristown, PA 19401

**Re: DEP May 12, 2017 letter**

Dear Mr. Hartzell,

I am writing in partial response to your letter of May 12, 2017. I am very disappointed to see your blatant mischaracterization of what the Delaware Riverkeeper Network has said about the remediation plans for the Bishop Tube site. Your letter falsely asserts that I and the Delaware Riverkeeper Network have suggested that the only work DEP is pursuing for remediation of the Bishop Tube site is this inadequate, partial clean-up plan being proposed by Constitution Drive Partners and O'Neill Developers.

Our letters to PA DEP very clearly lay out our position, concerns and questions regarding the partial clean up proposal for the near term and our efforts to redirect your energies towards pursuing the full clean-up plan instead. We have never stated that the current, inappropriate partial clean-up is your only effort at the site

That being said, it is very clear that DEP is currently pursuing an inadequate partial clean-up of the site in order to accommodate a massive residential development project without a plan for when, how and to what degree the site will be fully cleaned up. And in so doing, you are seeking a near term plan that will allow ongoing contamination to continue, that will exacerbate environmental degradation with the new development, and will be bringing new families (over 200 of them if the developer has his way) to this ongoing contamination.

Respectfully for the Record,

A handwritten signature in dark ink, appearing to read "Maya K. van Rossum".

Maya K. van Rossum  
the Delaware Riverkeeper

DELAWARE RIVERKEEPER NETWORK  
925 Canal Street, Suite 3701  
Bristol, PA 19007  
Office: (215) 369-1188  
fax: (215) 369-1181  
dm@delawareriverkeeper.org  
www.delawareriverkeeper.org

Cc:

Secretary Patrick McDonnell, PADEP

Regional Director Patrick Patterson, PADEP SouthEast Regional Office

Senator Andy Dinniman

Senator Daylin Leach

Representative Duane Milne

EPA Region III

Secretary Dennis Davin, DCED

Deanna Tanner, Attorney, Delaware Riverkeeper Network

Jordan Yeager, Curtin & Heefner, Counsel for the Delaware Riverkeeper Network





# pennsylvania

DEPARTMENT OF ENVIRONMENTAL PROTECTION

SOUTHEAST REGIONAL OFFICE

January 28, 2014

Mr. Brian M. Kroker  
Vice President, Asset Management & Operations  
O'Neill Properties Group  
OPG Property Management Corporation  
2701 Renaissance Boulevard, 4th Floor  
King of Prussia, PA 19406

Dear Mr. Kroker:

As you know, the Department of Environmental Protection (DEP) has been working with Roux Associates, as contractor to Johnson Matthey and Whitaker Corporation, under a federal Consent Decree, to address the release or threatened release of hazardous substances associated with the former Bishop Tube facility now owned by Constitution Drive Partners, LLC (CDP). This work has entailed both remedial investigatory work and implementation of in situ interim response actions within the building areas. As you also know, DEP formally authorized Roux Associates to implement a field study last winter for an anaerobic remediation process within Building 8 in the location of the Soil Vapor Extraction/Air Sparging (SVE/AS) system that was previously installed at the site and capped with a liquid boot. The SVE/AS system was installed in the context of an original Prospective Purchaser Agreement (PPA) with CDP and two Amendments thereto. The last Amendment to the PPA allowed CDP to cash-out of its potential liability to DEP for releases associated with Bishop Tube under certain conditions. One of those conditions, applicable to both the original PPA and the subsequent Amendments, states that CDP "shall not contribute to or otherwise exacerbate . . . any Existing Contamination attributable to the Site". Another condition states that CDP "shall not interfere with or impair any response actions taken by the Department or any other person or entity under the auspices of the Department."

In the early summer of 2011, a contractor for CDP destroyed the liquid boot while performing metals recovery activities within Building 8. Needless to say, this action interfered with or impaired the SVE/AS system that DEP had implemented and potentially exacerbated the Existing Contamination at the site, in violation of the PPA and its two Amendments. DEP requested that CDP repair the liquid boot to allow for the continued operation of the SVE/AS system. This was never done, in continued violation of the PPA and its two Amendments. Last spring, in the context of other discussions relating to potential redevelopment of the site, CDP informed DEP that it was looking into demolishing the buildings on the site in order to enhance the potential for redevelopment. Because demolition of the buildings would simplify implementation of Roux Associates' proposed field study, DEP indicated its support for demolition of the buildings in lieu of repair to the liquid boot, even so far as sending a letter to East Whiteland Township in support of CDP's application for a demolition permit.

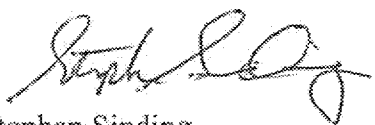
DEP also met with representatives of VIST Bank back in September in order to encourage them to concur with CDP's demolition of the buildings, something that later became moot once a new investor was secured by CDP. Lastly, during a meeting in mid-December, Regional Director Cosmo Servidio was assured by Mr. O'Neill that the demolition was going forward immediately. Notwithstanding that assurance, nothing has occurred at the Bishop Tube site, and CDP continues to be in violation of the PPA and its Amendments.

This is to advise you that DEP now considers the CDP's violation of the PPA to void the Covenant Not To Sue set forth in Paragraph 7, which states: "These covenants . . . may terminate at the sole discretion of the Department upon [CDP's] failure to meet any of the requirements of the CO&A." Please be advised that this determination is not intended as an appealable action, and DEP will consider whether to exercise its enforcement options related to this determination as matters progress at the site. Immediate demolition of the buildings as CDP has repeatedly proffered will directly impact DEP's consideration of such enforcement options. In this regard, please be advised that DEP has instructed Roux Associates to schedule drilling activities in Building 8 for implementation of the field study identified above by the fourth week in February.

Please notify us by February 7, 2014, of your intention and schedule for the demolition of the building. Depending on your response, we may schedule a meeting to coordinate the remedial activities at the site.

If you have any questions, please feel free to contact Mr. Dustin Armstrong at 484.250.5723.

Sincerely,



Stephan Sinding  
Regional Manager  
Environmental Cleanup and Brownfields

cc: Mr. Servidio  
Andy Hartzell, Esq.  
Mr. R. Patel  
Mr. Armstrong  
Re 30 (ch14ecb)023-5

RP



December 1, 2015

Jonathan H. Spergel, Esq.  
Manko, Gold, Katcher & Fox, LLP  
401 City Avenue, Suite 901  
Bala Cynwyd, PA 19004

Jonathan:

By letter dated October 7, 2015, you requested that the Department of Environmental Protection (DEP) reconsider its rescission of the covenant not to sue involving Constitution Drive Partners (CDP) for the Bishop Tube site. At this time, DEP feels that granting such a request is premature.

DEP rescinded the covenant not to sue based on concerns raised by CDP's actions at the site despite DEP's attempt to assist CDP in the remediation and redevelopment of the site. At present, DEP is not aware of any changes at the site that support granting of your request.

As a reminder, while the remedy selection process has not started, the responsible parties and their contractors will need unrestricted access to the site to implement the proposed remediation.

Please don't hesitate to contact me if you have any comments or concerns related to the above request.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephan Sinding".

Stephan Sinding  
Regional Manager  
Environmental Cleanup and Brownfields

Re 30 (eh15ecb)329

11